REMARKS

Claims 23, 29-31, 35-37, 42, 47-48, 50-58, 60-62, and 67, as amended, are presented in this application. Claims 51 and 55 have been amended to correct typographical errors: no new matter has been introduced. Thus, the amendments should be entered at this time.

Claims 23, 29-31, 35-37, 42, 47, 48, 50-58, 60-62 and 67 were rejected under 35 U.S.C. §103(c) as being unpatentable over the combination of US patent 4,860,550 to Aoki et al. ("Aoki") with either of US patents 5,329,950 to Barinas or 6,564,698 to Rolland for the reasons set forth on pages 3-4 of the office action.

Aoki relates to an apparatus for preparing ice creams, wherein a freezing cylinder is constituted such that a liquid mix supplied from a mix tank is stirred in a stirring apparatus that is installed in the inside of the freezing cylinder, and refrigerated so as to complete ice creams, any amount of which can be dispensed through a dispensing port. For the cleaning and sterilization of the inside of the cylinder, the inside is heated by reversing the flow of heat media which is to be circulated through the refrigerating part of the cylinder to dissolve and automatically withdraw the ice creams in the cylinder, then cleaned several times by supplying and discharging hot water, to and from the inside, and after that sterilized by supplying hot water to the inside, and discharging the water from it.

Thus, Aoki describes an ice-cream dispenser which can be operated according to three sequential operations (col.10 l.36-39) :

- before opening the store, the dispenser is sterilized by introducing a sterilizing-washing agent in the flavor (syrup) tanks and launching the sterilization operation (col.10 l.52-68). The agent is then drained and the lines are washed (col. 12, l. 17 to col.14 l.23) and flavors are introduced in the tanks for preparing the dispenser for delivering ice-creams (col.15 l.5-col.16 l.37).

- during business hours, ice-cream is delivered by the dispenser (col.16 l.38-col.19 l.42),

- after closing the store, the lines are sterilized and washed with hot water (col. 19 l.43-48). The liquid mix is discharged from the dispenser and a rinse is introduced in the mix tank (col.19 l.49-col.20 l.10).

Aoki's device does not enable switching between the food dispensing and cleaning and sanitizing operations at a plurality of intervals without having to connect an external source of cleaning fluid to the dispensing path each time cleaning is needed, as recited in the present

independent claims. Instead, in Aoki, the same tank is used for either storing the flavors or the cleaning solution. There is no rapid and easy switch between the different operations. He either has a supply of food or a supply of cleaning fluid, but not both. Thus, to conduct a cleaning, Aoki must remove the syrups and add cleaning solution in their place. The switch cannot be automatic as recited in claims 35 and 58 since the operator must empty the tanks to refill them with other products according to the operation to be implemented. Also, Aoki does not provide a dispenser that includes both a source of food product and a source of cleansing fluid as recited in claim 55. Thus, Aoki simply does not teach or disclose how to clean without interrupting the delivery of the product by replacing its supply.

Aoki also does not utilize a mixing bowl. Instead, Aoki provides a freezing cylinder 9 wherein a liquid is refrigerated to form the ice cream. Where the ice cream is dispensed, the liquefied flavors are added to ice cream and are "shaked and poured" into a cup (col.5, l.55-56). Thus, Aoki does not have a cleansing fluid path that at least partially includes that portion of the dispensing path from the mixing bowl to the outlet as recited in all independent claims.

Furthermore, Aoki does not describe a mechanism comprising a cleansing conduit connected to the food delivery mechanism to form an entry point thereunto and for directing the cleansing fluid along the cleansing fluid path in association with the food delivery mechanism. As Aoki differs from the present claims for all these reasons, the Barinas and Rollins patents are cited in an attempt to remedy the deficiencies of Aoki.

Rolland discloses a valve assembly for use in clean-in-place systems that arranges multiple product blocking valves with one bleed valve. The valve assembly has a junction providing fluid communication between the primary isolation valve, the one bleed valve and the multiple product valves so that continuous flow cleaning capabilities can be provided.

Rolland's valve assembly is designed for cleaning vessels and containers used in batch processing systems. Again Rolland implements several stages of operation (see par. [0025]):

- the batch processing in the container (vat),
- the cleaning of the container, and
- the cleaning of the lines.

The product processed in the vat must be transferred and isolated in a curd transfer reservoir during the cleaning of the container and the lines. Thus, like Aoki, Rolland is not adapted to the alternate dispensing and cleaning processes in a food dispenser according to the

present invention, wherein the method provides for switching between the dispensing of the food or food component and the conducting of the cleaning and sanitizing operations at a plurality of time intervals without having to connect an external source of cleaning fluid to the dispensing path each time cleaning is needed. In this regard, Rolland is similar to Aoki because each reference requires the addition of a separate cleaning solution when cleaning is required. Thus, Rolland does not remedy the deficiencies of Aoki, such that the combination of Rolland and Aoki does not result in the presently claimed invention. This rejection should be withdrawn.

Barinas also does nothing to remedy the deficiencies of Aoki. Barinas discloses automatic, self-contained cleaning and sanitizing equipment that includes a first liquid holding tank for a cleaning solution and a second liquid holding tank for a sanitizing solution. A cleaning line runs from the first tank and has an outlet adapted for connection to an item to be cleaned, and a cleaning return line runs back to the first tank and has an inlet adapted for connection to the item to be cleaned. A sanitizing line runs from the second tank and has an outlet connected directly to the item to be cleaned, or to the cleaning line so as to create a common connection to the item to be cleaned, and a sanitizing return line runs back to the second tank directly from the item to be cleaned, or from the cleaning return line so as to create a common connection running from the item to be cleaned. There is a first pump connected to the equipment for circulating liquid from the first tank to the item to be cleaned and back to the first tank through the cleaning return line and a second pump connected to the system for circulating liquid from the second tank to the item to be cleaned and back to the second tank through the sanitizing return line. An ozone generator is included on the second tank or the sanitizing line for inclusion of ozone therein.

The only apparently relevant disclosure in Barinas is the recirculation of the cleaning and sanitizing fluids through the food or beverage device. However, Barinas also refers to a portable equipment which can be taken from place to place. As taught by Barinas, the equipment must be connected to the item to be cleaned, such as a water cooler 7, and cleaning or sanitizing is carried out afterward. Therefore, Barinas basically teaches that one can hook up an external pump recirculation system to various equipment but he fails to disclose providing a food delivery mechanism that includes a bowl for mixing or preparing a food or food component, a conduit for dispensing the mixed or prepared food or food component from the bowl to an outlet along a dispensing path, a cleansing fluid supply located in the dispenser, and a cleansing fluid path that

at least partially includes that portion of the food or food component dispensing path from the bowl to the outlet, as presently recited in the independent claims. And while the use of Barinas portable equipment might be adaptable to Aoki's system, this combination would not result in the present invention since all of the method steps are carried out within the dispenser. At best, one could envision the elimination of the need to replace the syrup supplies with cleaning fluid by instead providing a connection for Barinas' external pump recirculation system. Even so, this is not what is recited in the present independent claims which provide switching between the dispensing of the food or food component and the conducting of the cleaning and sanitizing operations at a plurality of time intervals without having to connect an external source of cleaning fluid to the dispensing path each time cleaning is needed. As noted above, this switching cannot be automatic as recited in claims 35 and 58 since the operator must connect the Barinas pump to the Aoki system when cleaning is desired. Also, Barinas does not remedy the deficiency of Aoki with regard to the provision of a dispenser that includes both a source of food product and a source of cleansing fluid as recited in claim 55. In view of all these differences, the rejection based on the combination of Barinas and Aoki has been overcome and should be withdrawn.

Applicants further submit that there is no evidence or suggestion in Barinas or Rolland of the presently claimed configuration and method of use, nor is there any evidence or suggestion in Barinas or Rolland to modify Aoki to use Applicants' device and method. See *Ex Parte Katoh et al,* Board Appeal Decision 20071460, Decided May 29, 2007 . Furthermore, the Examiner has not provided any evidence that it was conventional in the art to provide the cleaning supply in the dispenser. See *Ex Parte Owlett,* Board Appeal Decision 20070644, Decided June 20, 2007. Accordingly, the Examiner has not provided a sufficient reason or explicit analysis of why the disclosures of the references should be combined as suggested in the office action. See *Ex Parte Erkey et al,* Board Appeal Decision 20071375, Decided May 11, 2007. There is no suggestion to combine the teachings and suggestions of Barinas or Rolland with Aoki, as advanced by the Examiner, except by using Appellants' invention as a template through a hindsight reconstruction of Appellants' claims. See *Ex Parte Crawford et al,* Board Appeal Decision 20062429, Decided May 30, 2007.

In light of the foregoing, all rejections have been overcome and should be withdrawn, so that it is respectfully submitted that the entire application is believed to be in condition for allowance, early notice of which would be appreciated. Should the Examiner not agree, then a personal or telephonic interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of this application.

Respectfully submitted,

2/11/10

Date

Allan A. Fanucci (Reg. No. 30,256)

WINSTON & STRAWN LLP
Customer No. 28765
212-294-3311